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August 30, 1996

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, NW.
Washington, D.C. 20554

Re: In the Matter of Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, as amended and Regulatory Treatment of LEC Provision of Interexchange Services Originating in the LEC's Local Exchange Area, CC Docket No. 96-149

Dear Mr. Caton:

Pursuant to the Notice of Proposed Rulemaking in the above captioned matter, enclosed please find an original and six copies of the Joint Reply Comments of the Information Technology Industry Council and the Information Technology Association of America. Please date stamp the additional copy and return it with our messenger.

If you have any questions regarding this filing, please do not hesitate to call.

Sincerely,

Colleen Boothby

Colleen Boothby

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act, as amended	)	
and	)	CC Docket No. 96-149
Regulatory Treatment of LEC Provision of Interexchange Services Originating in the LEC's Local Exchange Area	)	

JOINT REPLY COMMENTS OF THE INFORMATION TECHNOLOGY INDUSTRY COUNCIL AND THE INFORMATION TECHNOLOGY ASSOCIATION OF AMERICA

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August 30, 1996

SUMMARY

The Information Technology Industry Council ("ITI") and the Information Technology Association of America ("ITAA") are filing these reply comments jointly in support of pro-competitive, non-accounting safeguards for the Bell Operating Companies' ("BOCs'") entry into the equipment, interLATA services, and information services markets, pending the development of full competition in local exchange markets. ITI and ITAA are the principal trade associations of the nation's information technology industry.

ITI and ITAA support stringent non-accounting safeguards and enforcement of safeguards rules because both are crucial to the preservation of competition in the equipment manufacturing, interLATA services, and information services markets. In keeping with the Congressional intent embodied in the 1996 Act to impose safeguards that broadly preserve and protect competition in non-telephony markets, the information services classified as interLATA must include intraLATA information services that potentially involve interLATA transmission.

ITI and ITAA also urge the Commission to implement the safeguards required under Section 273 of the Act before granting manufacturing authority to any BOC because the regulations required by Sections 271 and 272 are not sufficient by themselves to protect competition in the equipment manufacturing market.

To achieve the broad, pro-competitive goals of the Act, the Commission must impose the "maximum separation" required by the Commission's *Computer II* rules. ITI and ITAA agree with those commenters who argue that the Commission's existing prohibitions against the bundling of equipment and enhanced services with regulated transmission services should continue to apply to the BOCs and be applied to their affiliates. In addition, the dominant carrier regulations applicable to the BOCs should apply to their affiliates who provide in-region, interexchange service.

ITI and ITAA disagree with commenters who argue against the adoption of procedures to eliminate discrimination in the establishment of standards. The Commission should require the BOCs to establish fair and non-discriminatory network performance, interconnection, and equipment interoperability standards.

Finally, the Commission must confirm that protocol conversion remains an information service which the BOCs must provide through their separate affiliates. There is no basis, either in law or policy, for the Commission to abandon its highly successful, pro-competitive policies governing the provision of protocol conversion.

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JOINT REPLY COMMENTS OF THE INFORMATION TECHNOLOGY INDUSTRY COUNCIL AND THE INFORMATION TECHNOLOGY ASSOCIATION OF AMERICA

INTRODUCTION

The Information Technology Industry Council ("ITI") and the Information Technology Association of America ("ITAA") hereby jointly submit Reply Comments on the Notice of Proposed Rulemaking ("NPRM")[1] in the proceeding captioned above.

[1] *Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act, as amended, and Regulatory Treatment of LEC Provision of Interexchange Services Originating in the LEC's Local Exchange Area*, CC Docket No. 96-149, Notice of Proposed Rulemaking, FCC 96-308 (Released July 18, 1996) ("*NPRM*").

ITI and ITAA are the principal trade associations of the nation's information technology industry.

ITI represents a variety of information technology companies, including manufacturers, integrators and service providers. For more than two decades, ITI (and its predecessor, the Computer and Business Equipment Manufacturers Association) has played a leading role in the development of rules governing the design, development and marketing of computing devices.

ITI is participating in this proceeding because of its long-standing commitment to the policies underlying the non-accounting safeguards established by the 1996 Act.[2] ITI believes that competition, not regulation, is the best means of ensuring high quality, economically efficient prices, and technical innovation in information services and equipment markets. To protect the competition that already exists in these markets from anti-competitive entry by Bell Operating Companies ("BOCs") with their local exchange monopolies, ITI supports regulation as a transition mechanism until such time as local exchange markets become competitive.

In addition, the convergence of traditional telephony, data, computing, and entertainment services and technologies has (and will continue to) blur the distinctions between the equipment produced by ITI members for new information technologies and the customer premises equipment ("CPE")[3] and

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[2] Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996) (Codified at 47 U.S.C. § 151 et seq.) ("1996 Act").

[3] *Id.* at § 153(38).

telecommunications equipment[4] manufactured by the BOCs. Thus, the manufacturing safeguards required by the 1996 Act and adopted in this proceeding will protect far more than competition in traditional CPE and network equipment markets; the safeguards will also protect competition in key economic sectors of the nation's economy.

As explained in its initial comments in this proceeding, ITAA, together with its twenty-five regional technology councils, represents more than 9,000 companies. ITAA's member companies provide the public with a wide variety of information products, software, and network-based enhanced or, in the language of the Telecommunications Act, information services. The wide array of information services provided by ITAA's members are used by business, government, and residential consumers.

As an organization of information service providers that are unaffiliated with local exchange carriers, ITAA has a strong interest in the rules that govern the information services provided by the BOCs. In its initial comments in this docket, ITAA explained that structural separation and non-discrimination safeguards are necessary to prevent the BOCs from placing their competitors at a disadvantage by engaging in anticompetitive conduct, such as cross-subsidization and access discrimination. ITAA therefore urges the Commission to implement the separate affiliate and nondiscrimination requirements of

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[4] *Id.* at § 153(50).

Section 272 of the Telecommunications Act in a manner that will ensure fair competition in the flourishing market for information services.

DISCUSSION

I. STRINGENT NON-ACCOUNTING SAFEGUARDS AND ENFORCEMENT ARE CRUCIAL TO THE PRESERVATION OF COMPETITION IN THE EQUIPMENT MANUFACTURING, AND INFORMATION SERVICES MARKETS.

ITI and ITAA strongly support the Commission's efforts to develop effective separate affiliate requirements and other non-accounting safeguards to govern the Bell Operating Companies' (BOCs) entry into the equipment manufacturing and information services markets.[5] The safeguards that the Commission develops in this proceeding to govern the BOCs' transition to a competitive environment are even more significant than historical safeguards because the convergence of multimedia markets makes the new safeguards applicable to a broader scope of economic activity.

Effective competition in markets for personal computers, information services, entertainment devices (such as television sets and set top boxes) and other emerging multimedia products and services depends on effective safeguards. These markets are now fiercely competitive, but products and services are increasingly linked by or delivered with the assistance of local telecommunications networks -- over which the BOCs now enjoy virtual monopolies. The 1996 Act properly recognizes that the BOCs can use their

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5 *See* NPRM at ¶ 8.

market power in local exchange markets to distort or destroy competition in both the equipment and interLATA services markets.

Effective non-accounting safeguards are necessary to protect ratepayers in the BOCs' current (monopoly) markets and existing competition in the new markets the BOCs seek to enter. The BOCs' monopoly ratepayers will be protected from paying the costs of cross-subsidizing the BOCs' entry into new markets and competition in new markets will be protected from discrimination with respect to the pricing, provisioning and maintenance of BOC bottleneck services upon which these competitive markets are now entirely dependent. In addition, by separating the BOCs' new competitive ventures from their local exchange operations, the Commission will prevent anti-competitive discrimination by the BOCs with respect to equipment purchases and the dissemination of information regarding network changes as well as ensuring maximum choice for consumers in customer premises equipment.

Effective safeguards are also necessary to the development of competitive local telephone markets. Competition in local telephone markets will be achieved only if safeguards are implemented to ensure that the BOCs do not use their monopoly power or market dominance to bundle products and services, or to restrict access to standards and technical specifications enabling equipment interconnection, in a manner which would freeze other hardware, software and service providers out of the marketplace.

The statute makes clear Congress' intent to establish a comprehensive and absolute prohibition against any BOC attempt to discriminate, which the Commission should implement with similarly comprehensive and absolute rules. That intent should also be the touchstone for future FCC interpretations, applications and enforcement of Sections 271 and 272 of the Communications Act. Because the Act's prohibition on discrimination is so clear and comprehensive, the Commission need not attempt in the present rulemaking to anticipate with exhaustively detailed regulations every complex circumvention by the BOCs of the Act's nondiscrimination requirements.[6]

With so much at stake for markets that are the future of America's growth in the information age, ITI urges the Commission to act vigorously to adopt strict structural safeguards that reduce the potential for and deter anticompetitive conduct by the BOCs. As a crucial first step in discouraging anti-competitive conduct, the Commission should also revisit its current tariff and other policies to ensure that the BOCs are prevented from charging excessive rates for their local exchange and local access services -- services which are virtually the lifeblood of the future multimedia markets.

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[6] *See, e.g.*, NPRM at ¶ 67 (concern that "goods," "facilities," and "services" could be interpreted to limit the products and services a BOC is obligated to provide to unaffiliated entities on non-discriminatory basis).

II. BOCS SHOULD BE REQUIRED TO USE SEPARATE AFFILIATES FOR BOTH *INTER*LATA INFORMATION SERVICES AND *INTRA*LATA INFORMATION SERVICES THAT POTENTIALLY INVOLVE *INTER*LATA TRANSMISSION.

The Communications Act imposes separate affiliate requirements on the BOCs' provision of interLATA information services.[7] However, as both the NPRM[8] and several commenters have observed,[9] classifying a given information service as exclusively intraLATA is in most cases impossible because the jurisdictional nature of the service depends upon the customer's use of the service and the location of the network services and databases with which users interact in the course of using the service. Indeed, the jurisdiction of an information service can change in the course of a single call. A typical Internet connection, for example, may start off as an intraLATA call to a local database. With one click on a "hypertext" term, however, the same call will become an interLATA (or even international) communication with another location.

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7 47 U.S.C. § 272 (1996).

8 *See* NPRM at ¶¶ 43-47.

9 Comments of Sprint Corporation (filed August 15, 1996) ("Sprint Comments") at 17-18 ("as a practical matter, it is impossible to make [the interLATA/intraLATA] distinction for many information services"); Comments of Voice-Tel (filed August 15, 1996) ("Voice-Tel Comments") at 12 ("nowhere are distances blurred more than in the provision of information services"); Comments of the Information Technology Association of America (filed August 15, 1996) ("ITAA Comments") at 10 ("The difficulty in distinguishing between interLATA and intraLATA information services is that information services are rarely, if ever, constrained by LATA boundaries"); *see also,* Comments of MFS Communications Company, Inc. (filed August 15, 1996) at 16 (because internet services are global in nature, they are interLATA information services); Comments of the Telecommunications Resellers Association (filed August 15, 1996) ("TRA Comments") at 11 (urging the Commission to broadly define interLATA information services).

There are few, if any, information services that do not have the *potential* to utilize interLATA facilities. Consequently, because any given information service could involve interLATA transmissions, depending upon the location of the user or other interacting services, ITI endorses ITAA's position in its Comments that all information services that are *capable* of accessing, or being accessed by, interLATA facilities be considered interLATA information services.[10]

A broad definition of interLATA information services would be consistent with the Congressional intent embodied in the Act to impose safeguards that broadly preserve and protect competition in non-telephony markets. Separate subsidiaries for potentially interLATA information services will help ensure that the BOCs are not able to use their existing market power in local exchange services to obtain an anticompetitive advantage in the new information services markets that they enter or degrade the competitive nature of these markets. In addition, separation requirements for a broader scope of information services will help protect subscribers to BOC local telephone services against the potential risk of having to pay costs incurred by the BOCs to enter competitive information service businesses.

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[10] ITAA Comments at 10; *see also*, NPRM at ¶ 44.

III. THE COMMISSION MUST IMPLEMENT THE SECTION 273 SAFEGUARDS BEFORE GRANTING MANUFACTURING AUTHORITY TO ANY BOC.

The regulations required by Sections 271 and 272 are not sufficient by themselves to protect competition in the equipment manufacturing market. The Act also directs the Commission to implement the safeguards established by Section 273 of the Act. That section requires the BOCs to comply with a variety of disclosure and non-discrimination requirements before they may manufacture or sell telecommunications equipment.

The Section 273 safeguards are integral to the statutory scheme and vital to the protection of competition in the markets currently closed to the BOCs. These safeguards are closely related to the Section 272 safeguards addressed in the current proceeding, and are similarly important to ensuring competitive markets. The information requirements set forth in Section 273(c), especially the requirements of Section 273(c)(3) regarding non-discriminatory disclosure of protocols and technical requirements, are particularly important to assuring competitive CPE markets.

The Commission has repeatedly noted the connection between Sections 272 and 273 and has stated that it will soon initiate the rulemaking proceeding required to implement the Section 273 safeguards.[11] The Commission has yet to do so, however. The Commission should clarify that, whatever the status of the Section 272 rules developed in *this* proceeding (and the BOCs' compliance

[11] *See* NPRM at ¶¶ 35, 96-152.

with them), a BOC nevertheless cannot manufacture or provide telecommunications equipment or CPE until it complies with regulations developed pursuant to Section 273(c)(3) implementing the Section 273 safeguards.

IV. BOC AFFILIATES SHOULD BE SUBJECT TO THE SAME NON-ACCOUNTING SAFEGUARDS AS THE BOCS.

Section 272(b)(1) requires a BOC affiliate to "operate independently" from the BOC. ITI and ITAA agree with commenters who support the NPRM's tentative conclusion that this term imposes requirements on both the BOCs and their affiliates beyond those identified in subsections 272(b)(2)-(5).[12]

ITI and ITAA also support those commenters who argue that the appropriate standard for the "operate independently" requirement is the "maximum separation" required by the Commission's *Computer II* rules.[13] Only maximum separation would be consistent with Act's goals of preserving competition in the information services and equipment markets, and preventing

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[12] Comments of the Competitive Telecommunications Association (filed August 15, 1996) ("CTA Comments") at 13; Comments of Excel Telecommunications, Inc. (filed August 15, 1996) ("Excel Comments") at 4-5; Comments of Frontier Corporation (filed August 15, 1996) ("Frontier Comments") at 4; Comments of MCI Telecommunications Corporation (filed August 15, 1996) ("MCI Comments") at 23; Sprint Comments at 18; Comments of Telecommunications Industry Association (filed August 15, 1996) at 21; Comments of AT&T Corp. (filed August 15, 1996) ("AT&T Comments") at 19; ITAA Comments at 17; Comments of the Independent Data Communications Manufacturers Association (filed August 15, 1996) ("IDCMA Comments") at p. 3.

[13] IDCMA Comments at 4; MCI Comments at 26-27; Comments of Time Warner Cable (filed August 15, 1996) at 17; *see also* Frontier Comments at 4 (*Competitive Carrier* rules are a minimum); AT&T Comments at 20 (Section 272(b)(1) should be construed to require at least the additional structural separation rules of Computer II); ITAA Comments at 11 and 19 (Computer II rules are now in effect, but Section 272 is stricter. Commission should harmonize Computer II rules with requirements of Section 272); Excel Comments at 4 (interpretation of "operate independently" should incorporate both *Competitive Carrier* and *Computer II* requirements); CTA Comments at 14-15 (Competitive Carrier requirements are insufficient).

the BOCs from leveraging their local exchange monopolies to distort competition in adjacent competitive markets.

Accordingly, the Commission must require the BOCs' affiliates to obtain exchange or other network services from incumbent local exchange carriers pursuant to generally available, published[14] rates, terms, and conditions[15]; and should prohibit BOC affiliates from jointly owning, sharing with, or obtaining from, the BOCs any facilities, space, or other property, whether the BOC currently uses the assets to deliver regulated or unregulated services.

In addition, ITI and ITAA agree with those commenters who argue that the unbundling and interconnection requirements of the Commission's Open Network Architecture[16] and *Computer II*[17] rules should continue to apply to the BOCs, and should be applied to their affiliates.[18] In particular, ITI and ITAA agree with those commenters who argue that the BOCs' affiliates should be prohibited from bundling equipment or information services with local exchange, exchange access, or interLATA services until such time as local exchange

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14 To be "published," the BOC's rates, terms and conditions must be either tariffed or made available for public inspection by filing with a regulatory agency (*e.g.*, rates, terms, and conditions for unbundled network elements established pursuant to interconnection agreements under Sections 251 and 252 of the Act that are filed with state utility commissions).

15 Consistent with the Commission's current affiliate transaction rules, the BOCs should use their tariffed rate if they provide a service that appears in their tariffs, the prices established in agreements with third parties where the service is offered to others, and their fully distributed costs for services offered and usable exclusively by their affiliates. *See* NPRM at ¶¶ 96-150.

16 *Filing and Review of Open Network Architecture Plans,* 4 FCC Rcd 1 (1988).

17 *See* 47 C.F.R. § 64.702(e).

18 *See, e.g.,* Excel Comments at 8; MCI Comments at 19; TRA Comments at 12.

markets become fully competitive. Absent such a prohibition, the BOCs will be able to use the bundled offerings of affiliates to discourage subscribers from using the service offerings of competitive LECs ("CLECs") as CLECs enter local exchange markets; and to deny competing equipment providers access to innovative service offerings. The bundling prohibition for BOC affiliates would recognize the market power of the BOCs in local exchange markets and counteract the BOCs' incentive and ability to use their affiliates' offerings to impede the development of competition in local exchange and equipment markets.[19]

For the same reasons, ITI and ITAA agree with the Commission's tentative conclusion in paragraph 70 of the NPRM that Section 272(a) prohibits a BOC from transferring to a competitive affiliate any existing network capabilities of its local exchange entity. Such a transfer would permit a BOC affiliate subject to Section 251(c) to violate the separate affiliate requirement of Section 272(a) which explicitly applies to such affiliates as well as BOCs.

Finally, ITI and ITAA believe that carriers with market power should continue to be regulated as dominant carriers, and that, in addition to the requirements described above, the dominant carrier regulations applicable to the

[19] The BOCs would have the incentive and ability to do so because the separate affiliate requirements are temporary. Thus, the BOCs can be expected to skew their affiliates' pricing behavior or technical requirements to produce the customer and service arrangements that would be most beneficial in an integrated BOC-affiliate environment.

BOCs should also apply to their affiliates who provide in-region interexchange services.[20]

V. SAFEGUARDS SHOULD REMAIN IN PLACE UNTIL LOCAL MARKETS ARE COMPETITIVE.

ITI and ITAA believe that the emergence of competitive alternatives to the local exchange services offered by the BOCs will, over time, eliminate the need for non-accounting safeguards. Until effective, facilities-based competition is achieved, however, separate affiliate requirements and meaningful nondiscrimination safeguards are essential to preserve the competitive nature of the equipment manufacturing and information services markets.

Accordingly, the Commission should announce in this proceeding its intention to keep the safeguards in place beyond the applicable sunset periods, pursuant to Section 272(f) of the Communications Act,[21] until such time as effective, facility-based competition develops in local exchange markets. Such an approach would also address the concerns raised in the NPRM regarding the proper interpretation of subsections 272(f)(1) and (2) -- the sunset provisions for Section 272 which exclude subsection 272(e) -- and subsections 272(e)(2) and (4) -- which appear to presume the existence of separate affiliates.

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[20] *See, e.g.,* MCI Comments at 61, Excel Comments at 8; AT&T Comments at 65.

[21] 47 U.S.C. § 272(f) (1996). Bell Atlantic and US West maintain that the Commission lacks authority to extend the safeguards requirements beyond the initial periods established in the Act. Their comments apparently overlooked the explicit grant of authority to do just that in § 272(f)(1) and (2).

VI. THE COMMISSION SHOULD ADOPT REGULATIONS TO ENSURE THAT BOCS DO NOT DISCRIMINATE IN THE ESTABLISHMENT OF STANDARDS.

The NPRM seeks comment on the prohibition in subsection 272(c)(1) against BOC discrimination between affiliates and their competitors in the establishment of standards.[22] ITI and ITAA disagree with those commenters who argue that the Commission need not adopt procedures to ensure that the BOCs do not discriminate in the establishment of standards.[23] While ITI and ITAA agree that the subsection's prohibition on discrimination is absolute,[24] the Commission should facilitate implementation of the prohibition by requiring the BOCs to establish fair and non-discriminatory network performance, interconnection, and equipment interoperability standards. For BOCs who engage in standards-setting, the Commission should prescribe procedural protections for the establishment of standards that include an open process that affords all interested parties an opportunity to review and comment on proposed standards before they are established.[25]

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22 *See* NPRM at ¶ 78.

23 *See, e.g.,* Comments of NYNEX Corporation (filed August 15, 1996) at 7-8; comments of United States Telephone Association (filed August 15, 1996) at 25; *see also* Comments of Pacific Telesis Group (filed August 15, 1996) at 31.

24 ITAA Comments at 21.

25 Indeed, § 273(d)(4) requires the Commission to establish these procedural protections.

VII. PROTOCOL CONVERSION IS AN INFORMATION SERVICE WHICH THE BOCS MUST PROVIDE THROUGH THEIR SEPARATE AFFILIATES

Some BOCs argue that protocol conversion, which constitutes an enhanced service under the Commission's Rules,[26] does not fall within the statutory definition of an information service.[27] Therefore, they conclude, the BOCs may provide protocol conversion as part of their regulated telecommunications service offerings, rather than through a Section 272 affiliate. These assertions are not correct.

In enacting the Telecommunications Act, Congress chose to use the term "information" services, which was used in the MFJ, rather than the term "enhanced," which was adopted by the Commission in *Computer II*. That decision, however, was not intended to alter the Commission's well-established basic/enhanced dichotomy. To the contrary, as both the Commission and the BOCs themselves have acknowledged, the term information services has virtually the same meaning as the term enhanced services.[28] Adoption of the Act, therefore, did not alter the regulatory status of protocol conversion.

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[26] *See, e.g., Computer III Phase II Order,* 2 FCC Rcd 3072, 3081-92 (1987); *Computer II Reconsideration Order*, 84 F.C.C.2d 50, 60-61 (1980).

[27] Comments of Bell Atlantic (filed August 15, 1996) ("Bell Atlantic Comments") at 3; Comments of US West (filed August 15, 1996) ("US West Comments") at 12.

[28] *See, e.g. Amendment of Part 69 of the Commission's Rules Relating to Enhanced Service Providers,* 3 FCC Rcd 2631, 2633 (1988) (information services classification "substantially similar" to enhanced services); *Filing and Review of Open Network Architecture Plans*, 4 FCC Rcd 1, 24 n.60 (1988) (same); *see also* ITAA Comments at 12-14 (the definition of enhanced and information services "are substantially similar, if not identical"); Reply of the Bell Operating Companies in Support of Their Motion for a Waiver of the Interexchange Restriction to Permit Them to Provide Information Services Across LATA Boundaries, *United States v. Western Electric.*, Civ. Action No. 82-0192 (HHG) at 31 n.43 (filed Feb. 2, 1994) (information and enhanced services "are, as a general matter, the same").

Moreover, protocol conversion fits squarely within the statutory definition of an information service. The Telecommunications Act defines an information service as "the offering of a capability for generating, acquiring, storing, transforming, processing, retrieving, utilizing, or making available information via telecommunications."[29] A BOC that receives user information in one protocol (such as X.25) and delivers it in another protocol (such as frame relay or ATM) plainly has engaged in the "transforming" and "processing" of information. Consistent with Section 272, the BOC must provide his offering through a structurally separate affiliate.

Decisions of the Decree Court interpreting the MFJ's information services provision confirm that protocol conversion constitutes an information service. As originally adopted, the MFJ barred the BOCs from providing any information service. In the Gateway Order, the Decree Court modified the information services ban to allow the BOCs to offer a limited category of information services necessary to offer information "gateways."[30] As part of this decision, the Decree Court specifically authorized the BOCs to provide certain protocol conversions.[31] Such authorization plainly would have been unnecessary if the definition of information services did not include protocol conversion.

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29 47 U.S.C. § 153(41).

30 *See United States v. Western Electric*, 714 F. Supp. 1 (D.D.C. 1988).

31 *Id.* at 16-17.

Assertions that protocol conversion is not an information service because it does nothing more than assist in "the management of a telecommunications service"[32] are demonstrably incorrect. To be sure, a carrier may perform protocol conversions *within its network* in order to facilitate the provision of basic transmission service.[33] In many cases, however, carriers provide *end-to-end* protocol conversions that enable users to send information to a carrier's network in one protocol and have it exit the network in a different protocol.[34] A carrier that "transforms" user information in this manner plainly provides an information service.

Similarly, the suggestions that even end-to-end protocol conversions do not constitute information services because they "make no changes to the underlying data, but merely format the 'envelope'" are equally invalid.[35] The Commission should base its regulatory treatment of protocol conversion on whether a specific application results in a change in the "information content".

This approach suffers from two short-comings. First, as the Commission recognized in the Computer III Phase II Order, there is no feasible means to

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32 U S West Comments at 13.

33 For example, in a case in which a user delivers information to a carrier in the X.25 protocol, the carrier might convert that information to the X.75 protocol in order to transport the information across its network, and then convert the information back to the original X.25 protocol before it exits the network. Under the rules established by the Commission in *Computer II,* a carrier may provide such conversions as part of its regulated basic services.

34 A user might obtain such an end-to-end conversion to enable disparate computer networks to "talk to" each other. Protocol conversion applications also are essential to electronic commerce services, such as Electronic Data Interchange ("EDI").

35 Bell Atlantic Comments at 3.

distinguish between protocol processing applications that result in a "change in information content" from those that do not.[36] Any effort to do so would ensnare the Commission in time-consuming, case-by-case determinations, which would squander scarce administrative resources while increasing business uncertainty. Second, this approach would result in the regulation of protocol conversion offerings that have long been provided as non-regulated enhanced services. Whatever else Congress may have intended to do when it enacted the Telecommunications Act, it plainly did *not* seek to extend Title II regulation to competitively provided services, such as protocol conversion.

ITI and ITAA urge the Commission to use this proceeding to reaffirm its long-standing view that the appropriate line of demarcation is between transport transmission services in which the identical bit stream enters and exits the network, and those services -- such as protocol conversion -- in which the bit stream is altered when it exits the network. The former constitute the carrier's regulated basic telecommunications services and are appropriately offered by the BOC directly; the latter are a category of enhanced/information services and must be provided only through a separate affiliate.

The Commission should also reject arguments that, as a matter of policy, the BOCs should be allowed to provide protocol conversion as part of their regulated transmission service offerings. As an initial matter, the BOCs' policy arguments simply cannot defeat the plain language of the Telecommunications

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[36] *Computer III Phase II Order,* 2 FCC Rcd at 3080.

Act. Protocol conversion falls squarely within the definition of an information service; therefore, the Commission must require the BOCs to provide it through a separate affiliate.

There is, in any case, no merit to these policy arguments. Requiring the BOCs to provide protocol conversion through a separate affiliate will not preclude them from meeting customer demand for "seamless interconnection" among fast-packet services, such as multi-megabit data service, frame relay, and ATM.[37] Like any other information service provider, the BOCs' information service affiliates will be able to obtain non-discriminatory access to the BOCs' underlying basic transmission services. And, like any other information service provider, the separate affiliates may combine these services with their non-regulated protocol conversion offerings to develop solutions that meet their customers' needs. The BOCs' information service affiliates will thus face no more than the same organizational boundaries and service integration issues that their competitors negotiate routinely.[38]

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[37] Bell Atlantic Comments at 3.

[38] U S West hypothesizes a situation in which the Commission lifts the separate affiliate requirement for BOC provision of interLATA services before it lifts the separate affiliate requirement for BOC provision of information services. Contrary to U S West's suggestion, there would be nothing "anomalous" about such an outcome. US West Comments at 13. Because Congress has established different "sunset" periods governing BOC interLATA services and information services, any resulting difference in regulatory treatment for protocol conversion and interLATA telecommunications services results from the binding choices made by the legislature. Such a result, moreover, would be little different from the Commission's original *Computer II* rules, which required the pre-divestiture Bell System to separate the provision of interexchange service from the provision of protocol conversion. *See Computer II Reconsideration Order,* 84 F.C.C.2d at 60 ("Evidence is lacking to support the proposition that protocol conversion service must be provided as part of a basic services. . . . Moreover, to conclude that these activities constitute a basic service would be to cloud the regulatory boundary that we have established and to disregard the fact that protocol conversion capabilities are now being offered completely external to the basic transmission network of underlying carriers.")

The Commission's policy regarding BOC provision of protocol conversion service has yielded substantial benefits. The distinction between basic telecommunications service and unregulated enhanced/information services (including protocol conversion) is well-established and easy to apply; it ensures that any safeguards adopted by the Commission will deter the BOCs from using their undiluted monopoly power in the local exchange to distort competition in the market for enhanced/information services; and it promotes deregulation by restricting the BOCs' regulated services to the offering of pure transmission capacity. There is no basis, either in law or policy, for the Commission to abandon its highly successful, pro-competitive policies governing the provision of protocol conversion.

CONCLUSION

Competition, not regulation, is the best means of ensuring high service quality, economically efficient prices, and technical innovation in the interLATA services, information services, and equipment markets. But the competition that currently existing in these markets will be compromised without adequate regulatory protections against anti-competitive entry by BOCs with monopoly power in their local service markets. Until the BOCs' local market power is